



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

mass meeting assembled, or through designated officials by themselves duly elected. It would, therefore, be within the province of the legislature to confer upon a city the right, by a majority vote of its inhabitants, to pass ordinances for the regulation or suppression of the retail trade in ardent spirits.

This leads to the question, whether Chatham township was in a position to receive such a measure of the power of local government?

The inhabitants of the several townships in this state are incorporated by a general law. They have, heretofore, without question, exercised many powers through a direct vote of the people. They determine how the poor shall be kept, how much money shall be raised for roads, and how much, if any, for school purposes, and I know of no reason why they may not be vested with the same powers which are or could be granted to municipal corporations, including the one which gives rise to this contest.

Whether those laws are wisely framed to subserve their purpose is not to be determined by the court, but must be referred to that branch of our government which has the exclusive right to enact or repeal them.

Regarding the established rule, that only in clear cases of excess should the action of the legislature be arrested by judicial interference, I am of opinion, that the mandatory writ should be denied.

United States Circuit Court, Eastern District of Wisconsin.

ANGELINA AMORY v. SAMUEL B. AMORY AND JOHN AMORY.

The original judgment or decree of a court having jurisdiction, cannot be disturbed in a co-ordinate tribunal, nor in a collateral action.

The decree of a state court having jurisdiction of a suit and of the parties to it, is conclusive of the matters determined, and cannot be impeached in the courts of the United States, nor of another state.

The Circuit Courts of the United States are not constituted to review and reverse the proceedings and judgments of state courts. It is the duty of such courts to give full faith and credit to the judicial proceedings and records of state tribunals.

This was a demurrer to a bill in equity, praying that the defendants, as executors of the last will and testament of James

Amory, deceased, may be perpetually enjoined and restrained from pleading, setting up, interposing or insisting upon the record proceedings or judgment of the Superior Court of New York city, for divorce, in any action or proceeding complainant may commence or prosecute in the court of Wisconsin, for the purpose of recovering any portion of the real or personal estate of which James Amory died seised or possessed. And that the complainant may be adjudged and decreed the lawful widow of the same James Amory. The other facts appear sufficiently in the opinion of the court.

F. M. Gillett, for complainant.

S. H. Pinney, for defendants.

MILLER, District Judge.—The bill sets forth, that complainant intermarried with one William A. Williams, in the year 1839, at Portland in Maine. His occupation was that of a mariner. In September 1841, at Boston, he shipped as second mate on board the ship *Louvre*, on a voyage from Boston to the East Indies and back. In August 1842 the vessel returned to Boston, bringing intelligence that Williams had deserted the ship at Singapore, East Indies. And it was a common rumor, among the friends and neighbors of complainant, that Williams had shipped at Singapore on board an English schooner, engaged in the tea trade, and he was lost in the China Sea; which intelligence and rumor complainant charges to be true. And since September 1841, except as above stated, she has not been able, after great exertions, to get any intelligence of or from Williams.

It is alleged in the bill, that in the year 1845, complainant removed to New York, where she became acquainted with James Amory, to whom she was lawfully married on the 12th March 1846; she continued to live with him as his lawful wife until September 1856; and she was during all that time recognised, received and treated as his lawful wife by him and his family and friends. And in that time there were various suits and proceedings in court in which she was a party with James Amory as his wife, and she as such signed deeds and releases, &c.

They separated by their mutual consent.

The bill further states, that in July 1857, complainant commenced an action in the Superior Court of New York against James Amory, for a divorce, on the ground of adultery. In the

action she was represented by John D. Burchard, as her attorney of record, until his death in the year 1860; and afterwards, Samuel J. Glassey was substituted, who continued as her attorney until the decree was entered.

The bill charges that, pending the proceedings in the action for divorce, and after Glassey had been substituted as her attorney, she applied to one Chauncey Shaffer, who was then and still is an attorney and counsellor at law, practising in the city of New York, to retain him as her counsel in the prosecution of the action, but he then declined so to act. That thereafter and before the making of the order referring the cause to H. W. Robinson, the referee appointed to try the issue and to report thereon to the court, Shaffer sent for complainant and informed her that he had made inquiries about her case and believed her to be a wronged woman, and that he would take hold of, and manage, conduct and try the same without fee or reward. Relying upon the good faith and the assurance of Shaffer, she did retain him as her counsel, to conduct and try the cause, and she fully stated to him her case, and all the facts and circumstances connected with it, and the facts relating to her prior marriage with Williams, and his shipment and death, and the evidences of recognition of her as the wife of Amory. Shaffer, from that time, was her sole counsel in the management, conduct and trial of the action, and he continued so to act during all her litigation in respect to the same.

It is further charged in the bill, that after the decree of the court dismissing her said action for divorce, she, confiding and relying upon the promise of Shaffer to take and prosecute an appeal, and being informed by him that she was in no way restricted or limited as to time, to take and perfect such appeal, because no notice of the entry of the judgment had been served upon her attorney, the appeal was delayed until on or about the 28th August 1862, when, at the instance and request of Shaffer, acting by his advice, she retained one Oscar Frisbie, who then was and still is a practising attorney in the city of New York, to take the appeal. Frisbie was at the time a young man and inexperienced as a lawyer, and was retained at the instance of Shaffer, and upon his promise to look after and take care of the appeal. Frisbie took an appeal in August 1862, which was dismissed on motion of the attorney of James Amory, in May 1863, on the ground that the appeal was not taken in time, according to the laws of the state, it appearing that notice of the entry of said

judgment or decree was served on the said Samuel J. Glassey, the attorney of record, on the day of the entry thereof. Complainant alleges that she was ignorant of the law, which limited the appeal to thirty days after the service of notice of the judgment. And Glassey, *although attorney of record* in the action at the time and on the day of the entry of the judgment, had taken no part or interest in the action after the trial before the referee, but left the case wholly in the charge of Shaffer. The notice was served on Glassey, by leaving it at his office in his absence, and he had no knowledge of it; complainant, by Shaffer as her attorney, subsequently to the dismissal of the appeal, made a motion to open the judgment in the Superior Court, which was denied by the court, and an appeal from said order was pending when James Amory died.

The bill then states, that James Amory departed this life in the city of Fond du Lac, in the state of Wisconsin, on the 16th day of August, 1868, where he was a resident and inhabitant. He died seised of a large real and personal estate, without lawful issue, and intestate, leaving complainant his lawful widow and heir under the laws of Wisconsin.

It is further stated that on the 12th day of September, 1868, an instrument of writing, purporting to be the last will and testament of said James Amory, deceased, was presented to the County Court of Fond du Lac county, by the defendants, together with their petition, praying that a day be appointed for hearing the proofs of said last will and testament, and that notice be given, &c., and that letters testamentary be issued to them as executors. The will was admitted to probate, and letters testamentary were issued to the defendants, from which complainant took an appeal upon the grounds alleged in the record.

On the hearing of the appeal in the Circuit Court of the county, the defendants did interpose the judgment or decree in the divorce suit as final and conclusive against her right to interfere in the proceedings before the County Court of Fond du Lac county. Such proceedings were had in the Circuit Court, and in the Supreme Court of this state, that the appeal from the order of the County Court was dismissed, it having been determined in the Supreme Court, in the absence of any trial of any of the questions of fact involved in such appeal, that the judgment in said action for a divorce was final and conclusive as against this com-

plainant, in respect to her interest in the subject-matter of said appeal; and by reason thereof she is deprived of her just and lawful right of contesting the validity and due execution of the will; and that the same now stands as final and conclusive in law against her in all things relating or pertaining to her rights as said widow and heir at law in respect to the property of said deceased.

Complainant further charges that the said alleged will is not in fact the last will of James Amory; and that her defence to said will, as set forth in the record of proceedings, is in all respects true; and but for interposing said judgment-record of the action for divorce, she would have been able fully to prove and maintain the same.

The bill further charges that James Amory fraudulently procured said Chauncey Shaffer to be retained and employed as the counsel of this complainant in the action for divorce, and to take the actual management and control of the same for her, and to secretly and corruptly act in and control said action and the prosecution thereof, for and in the interest of said Amory, to the end that such proceeding might be had in said action that judgment might pass against complainant, and in consideration whereof said Amory paid said Shaffer five hundred dollars. The bill charges that Shaffer, in conspiring with Amory to defraud complainant, procured himself to be employed by her as her counsel, and to conduct the action of divorce; and for the purpose of defeating her in the action, he kept back evidence of recognition which would have settled the matter in her favor.

It is further charged that Shaffer agreed to certain entries in the decree against her, and prejudicial to her rights; and in the interest of Amory he had notice of the decree left with Glassey to her prejudice in keeping her ignorant of the decree. And that the decree dismissing the action for divorce is void for want of jurisdiction of the court and for fraud of Shaffer. And that but recently, before bringing this bill, did she acquire full knowledge of the fraud practised upon her. And she is desirous of instituting legal proceedings and actions for the recovery of the property and estate to which she is entitled, as the widow and heir-at-law of said James Amory, deceased.

The bill prays that defendants, as individuals, and as executors of the last will and testament of James Amory, deceased,

may be perpetually enjoined and restrained, by order and injunction of this court, from pleading, setting up or interposing, or insisting upon the record and proceedings, or judgment of the Superior Court of the city of New York for divorce, and also of the County Court of Fond du Lac, and of the Circuit Court and Supreme Court, in a proceeding in said courts, for the probate of said will, in any action or proceeding complainant may commence, prosecute or defend, for the purpose of recovering any portion or share of the real or personal estate of which James Amory died seised or possessed. And that complainant may be adjudged and decreed to be the lawful widow of said James Amory, and that he died without lawful issue of his body. And that the judgments, orders and decrees of all said courts may be adjudged to be void and of no effect. And that the defendants, as executors, may be restrained and enjoined from executing said will under the order admitting it to probate, or from converting or disposing of the estate of said deceased. And during the pendency of this suit the defendants be restrained and enjoined from executing the will, &c.

The records of the proceedings of all the courts mentioned in the bill are annexed as part of it, to avoid repetition.

In the record of the divorce case in New York it appears that complainant was pressed to proceed with the suit. That a decree was rendered on her default, dismissing the petition. On motion and affidavits the decree was opened, on condition that they would set down the case for trial peremptorily on a day named, and James Amory was ordered to pay two hundred dollars to enable her to prepare for trial. Reference was made to H. W. Robinson, by consent of the counsel of the parties. The referee took testimony and heard the parties by their counsel on the points submitted, and reported that the parties were not married on or about the 12th March 1846, or at any other time. That at that time the plaintiff was the wife of William A. Williams, and not a single woman, nor capable of contracting a lawful marriage; and that Williams did not die previous to the 12th March 1846.

October 2d 1860. The cause coming on to be heard on the report of the referee, this complainant's counsel, Glassey and Shaffer, moved the court to open the case for further proof, which was denied, and a final decree was rendered against her. The record contradicts the bill in this. On the motion for further

hearing, the record states that the affidavits of Caroline Marchant and of Eliza Squires were read, and also, "that said motion to open the case for further proof be denied," while the bill states that no such motion had been made, and no such affidavits were read. It is charged in the bill that Shaffer *corruptly added* the concluding part of the judgment, which cannot be true, as that is the very essence of the judgment. It is also charged in the bill that Shaffer was the only counsel of this complainant after he became employed, while the record shows that Glassey continued to take part in the proceedings.

It is also charged in the bill that Shaffer suborned Mary Holden, complainant's sister, to commit perjury against her as a witness in the case.

A petition was afterwards presented by this complainant to the Superior Court of New York, praying that the judgment against her be opened. In that petition she sets forth that she was recognised by James Amory as his wife, that she executed deeds and releases as a party with him as his wife, that she was a party with him in a partition suit, &c. In support of that petition the depositions of Glassey and Shaffer, her attorneys, were read, in which they positively state that they had no knowledge of these facts. These were facts within her knowledge, which, it appears, she had not communicated to her counsel. In the bill she charges Shaffer with fraud in concealing these facts from the referee. To favor her petition to open the decree, she used the affidavit of Shaffer of his want of knowledge of these facts, for the concealment of which she charges him in the bill with fraud. Shaffer is also charged with fraud in informing her that there was no limit of time for taking an appeal, as there was no notice of the decree served. In this he may have been mistaken, as notice of the decree was served on Glassey at his office, who was her attorney, of record in the divorce suit.

In my opinion it is immaterial whether the above-mentioned facts were concealed from the referee or not. Complainant married James Amory as the widow of Williams. Amory had a right to consider her competent to enter into the marriage relation with him. They cohabited as husband and wife for nearly ten years, and during that time the facts of recognition occurred, he believing her to be his lawful wife. It coming to his knowledge that they were not lawfully married, for the reason stated, he was not

estopped in the action for a divorce from pleading and proving that her husband, Williams, was not dead at the date of his own marriage with her the 12th of March 1846. She imposed on him in marrying him before she had reasonable or legal cause of belief of Williams's death. She married him before legal presumption of death by the expiration of seven years from the time Williams was last heard of. And it was proven before the referee that a letter from him had been recently received. She is in fault in this respect, not James Amory. Whenever he discovered complainant's want of legal right to become his wife, it became his duty to repudiate the marriage with her. The Superior Court was correct in disregarding those alleged facts in the petition to open the judgment.

This bill is virtually an appeal to this court from the judgment in the divorce case, and also from the orders and proceedings in the County and Circuit Courts of Fond du Lac, and of the Supreme Court of this state; and is sought to be sustained upon the alleged fraud of complainant's attorney, Shaffer. This court is not constituted to review and reverse proceedings and judgments of state courts. It is our duty to give full faith and credit to those judicial proceedings and records.

It is well understood that the courts of the United States will not revise or correct judgments or decrees of state courts, where the jurisdiction of those courts appears in the record. A judgment or decree pronounced by a competent tribunal against a party having notice of the pendency of the suit is to be regarded by every other co-ordinate tribunal, and if the judgment or decree be erroneous, the error can be corrected only by a superior appellate tribunal. The binding distinction is between judgments or decrees merely void, and such as are voidable only; the former are binding nowhere, the latter everywhere, until reversed by a superior authority: *Hollingsworth v. Barlow*, 4 Peters 466-470. The record in the action for divorce exhibits full and complete jurisdiction in the courts of the state of New York, and a conclusive judgment or decree not void anywhere. The complainant, by her bill and accompanying exhibits, attempts to show that the judgment or decree of that court is voidable for fraud on the part of her attorney. This she cannot do in this court. She must appeal for relief to the courts of the state of New York.

It is well settled by authority and long practice, that to an ac-

tion on a judgment record, *nul tiel* record is the proper and only plea. The plea of *nil debet* is demurrable: *Mills v. Duryea*, 7 Cranch 481. If it is found on inspection of the record, that the court had jurisdiction of the subject-matter and of the parties, the judgment is conclusive. For fraud in obtaining the jurisdiction, either by an unauthorized appearance of defendant by an attorney, or by confession of judgment by an attorney without authority, or by a false return to the original process, or by any fraud on the party, relief can only be obtained in the court possessed of the original record. The tribunal wherein an action is pending, on representation of the facts, usually gives the party time to make his application for relief to the original court; and upon a certificate that the judgment is reversed or vacated, the plea of *nul tiel record* becomes available. The original judgment or decree of a court having jurisdiction cannot be disturbed in a co-ordinate tribunal, or in a collateral action. It is conclusive on the merits: *Landis v. Perkins*, 12 Missouri Rep. 254, 10 How. 349-371; *Groggin v. Aster*, 2 How. 319; *McPherson v. Cunliff*, 11 S. & R. 422; *Dunlap v. Stetson*, 4 Mason 349; *Diggs v. Wolcott*, 4 Cranch 179; *Elliott v. Prescott*, 1 Peters 340; *McKeon v. Voorheis*, 7 Cranch 24; *McElmoyle v. Cohen*, 13 Peters 312; *Burton v. Burgot*, 10 S. & R. 240. Pleas to the country, of payment, or satisfaction, or release, or of the Statute of Limitations, of the judgment, are allowable. Upon the same principle, the judgments and orders of the courts of this state are conclusive in a collateral action or proceeding: *Huff v. Hutchinson*, 14 How. 586; *Parish v. Terris*, 2 Black 606. The complainant not having prosecuted her action for divorce with proper diligence, she cannot come to this court for relief, on the ground that an appeal was pending from a discretionary order of the court denying her petition for a rehearing, at the time of the death of James Amory, particularly as that order was correct and justifiable.

The court of New York adjudged that complainant was not the wife of James Amory, consequently she cannot set up a claim here as his widow.

The prayer of the bill, that the defendants as executors of the last will and testament of James Amory, deceased, may be restrained and enjoined from executing the will, under the orders of the county court admitting the same to probate, involves direct interference on the part of this court with an exclusive and

independent power and duty of that court. That court possesses exclusive and independent probate powers. This court has none. The orders of that court within its jurisdiction are as conclusive as the judgments of this court. That court has charge of the estate of the testator, and has the lawful power to admit the will to probate, to issue letters testamentary, and to control the action of the executors according to the will, who are trustees of the legatees. All persons interested in the estate, have lawful right to look to that court for protection. That court had jurisdiction of the probate of the will and of issuing letters testamentary, and this complainant appeared and had her day in that court, the proceedings of which are sanctioned by the Supreme Court of the state. She cannot, as a non-resident of the state, claim the jurisdiction and action of this court, upon the facts pleaded in her bill with the exhibits annexed as part thereof, and the demurrer must be sustained and the bill dismissed.

Supreme Court of Missouri.

WOODS v. THE ATLANTIC MUTUAL INSURANCE CO.

Where the agent of the insured, being unacquainted with the premises, signs an application in which they are described as a "three or four story brick building," at the same time stating that he will send the insurers plats of the building, and in such plats the building is stated as "first and second story of brick," the insurers have sufficient notice to put them on inquiry, and, the third story being of frame, cannot in case of loss claim that the policy is void in law for misrepresentation of a material fact.

In a suit on such policy, whether the insurance was to be left open until the delivery of the plats, is a question of fact and as such belongs to the jury.

Whether the buildings in all material respects were such as described in the policy is also a question of fact, and the court had no right to give a binding instruction to find for the insurers.

If the plaintiff makes out a case upon which he can go to the jury, the court has no right after the defence is in, to assume it to be true, and require the jury to find for the defendant.

THIS was an action upon a policy of insurance, in which the question arose as to whether there had been a breach of warranty in consequence of the misrepresentation of a material fact.

The insurance was effected through an agent, who was unacquainted with the nature of the premises, and at the time of